

REMARKS

Claims 1-20 are pending in the application. Claims 1-20 are rejected in this Office Action.

Claims 1 and 7 were amended and support for the amendment can be found on page 6, lines 16 thru page 9 line 16. No new matter is added with this amendment.

Claims 5 – 6 and 8 – 14 have been canceled.

This response is filed after a telephonic interview with the undersigned attorney and Examiner Fubara on January 23, 2008. No exhibits were shown to the Examiner. Pending claims 1-20 were discussed as related to the below rejections. No specific prior art was discussed.

An Interview Summary mailed February 7, 2008, prepared by the Examiner identifies the general thrust of the principle arguments presented to the Examiner.

Rejections Under 35 U.S.C. §112, first paragraph

The Examiner rejects claims 1-20 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. The Examiner states, "that the emulsion composition contain a "combination of at least two organic pigments." The Examiner states, "[t]he specification as filed describes that at least one organic pigment can be present in the composition, and that at least one requires a minimum of one organic pigment and at least two requires a minimum of two."

Claim 1 now reads as, " A water and oil emulsion composition for making up the eyes and skin comprising a water phase, an oil phase, at least one silicone resin film forming polymer and at least one film forming polymer selected from the group consisting of (i) a silicone/acrylate copolymer; (ii) a vinyl/silicone copolymer, (iii) and mixtures thereof; and requiring a combination of red 40 lake, blue 1 lake, yellow 5 lake, green 5 lake that when combined achieve a deep brown or black color, and said pigments are free from iron oxides."

Without prejudice applicants have amended claim 1 to specify the organic pigments combination thereby removing the "at least" language the Examiner cited. Support for this amendment can be found on page 6, lines 16 thru page 9 line 16.

Rejections Under 35 U.S.C. §102

The Examiner rejects claims 1-20 under 35 U.S.C. §102(e) as being anticipated over Patil et al. US 6,342,209 ("Patil").

The Examiner states, "Patil teaches a cosmetic composition such as a mascara product made into the form of water-in-oil or oil-in-water emulsion, wherein the mascara contains 0.1-50% water, 0.5-55% oil, 0.1-30% pigment and 0.1-30% of one or more synthetic polymers." (office action pages 3-4). The Examiner states, "US'209 teaches organic pigments to be present at about 0.1-30%, see col.8, lines 10-29."

The Examiner points to column 8, lines 9-29, as teaching azo, triphenylmethane, anthraquinone, xanthene dyes designated as D&C and FD&C blues, browns, greens, oranges, reds, yellows, etc. dyes.

Applicants respectfully traverse the Examiners rejection.

To anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

Claim 1 has been amended to, " A water and oil emulsion composition for making up the eyes and skin comprising a water phase, an oil phase, at least one silicone resin film forming polymer and at least one film forming polymer selected from the group consisting of (i) a silicone/acrylate copolymer; (ii) a vinyl/silicone copolymer, (iii) and mixtures thereof; and requiring a combination of red 40 lake, blue 1 lake, yellow 5 lake, green 5 lake that when combined achieve a deep brown or black color, and said pigments are free from iron oxides.

As the Examiner pointed out, Patil discloses use of a wide range of inorganic or organic pigments as suitable colorants.

Applicants specify the use of organic pigments; red 40 lake, blue 1 lake, yellow 5 lake, and green 5 lake to achieve a deep brown or black color. Applicants submit with this response five films showing that the claimed combination of red 40 lake, blue 1 lake, yellow 5 lake, and green 5 lake. (APPENDIX A). Film A and 1 contain red 40 lake, blue 1 lake, yellow 5 lake, and green 5 lake to achieve a deep brown or black color. Film 2 does not contain red 40 lake and results in a green color. Film 3 does not contain blue 1 lake and results in an orange color. Film 4 does not contain yellow 5 lake and results in a purple color. Film 5 does not contain green 5 and results in a light brown color.

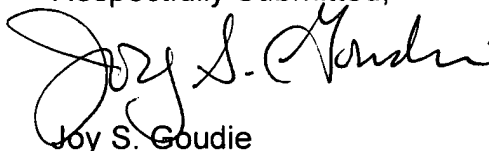
Patil failed to recognize the required combination of organic pigments claimed in this application and therefore failed to anticipate the subject invention as is required 35 U.S.C. §102(e) rejection.

Based on the amendment of the claims and the above argument applicants request the Examiner withdraw the 35 U.S.C. §102(e) rejection.

Applicants respectfully submit that this application is now in condition for allowance and earnestly request such action.

If any points remain at issue which can best be resolved by way of a telephonic or personal interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joy S. Goudie". The signature is fluid and cursive, with the first name "Joy" being particularly prominent.

Joy S. Goudie

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